

MINUTES

PLANNING COMMITTEE

August 24, 2011

A meeting of the Planning Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Nadine K. Nakamura, Chair, at the Council Chambers, 3371-A Wilcox Road, Līhu'e, Kaua'i, on Wednesday, August 24, 2011, at 9:53 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum
Honorable Dickie Chang
Honorable Nadine K. Nakamura
Honorable JoAnn A. Yukimura
Honorable Jay Furfaro, Ex-Officio Member

EXCUSED: Honorable Mel Rapozo
Honorable KipuKai Kual'i, Ex-Officio Member

There being no objections, the rules were suspended to take public testimony.

There being no one present to give testimony at this time, the meeting was recessed at 9:54 a.m.

The Committee reconvened at 9:55 a.m., and proceeded as follows:

Bill No. 2410 A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8, KAUA'I COUNTY CODE, 1987, AS AMENDED, RELATING TO THE PERMITTING PROCESS FOR TRANSIENT ACCOMMODATION UNITS
[This item was deferred.]

Chair Nakamura: I'd like to suspend the rules and have the Planning Department Director Mike Dahilig and Marie Williams to present some information.

There being no objections, the rules were suspended.

MICHAEL DAHILIG, PLANNING DIRECTOR: Aloha Committee Chair, members of the Council, Mike Dahilig and Marie Williams of the Planning Department. We will be providing a short presentation this morning based on proposed amendments to the Bill concerning the calculation of the allocation.

Mr. Furfaro: Excuse me; may I get some clarification, the proposed amendments Committeewoman is coming from the Planning Department or from your Committee?

Chair Nakamura: The amendments... we had a series of discussions but the Planning Department initiated the discussions.

Mr. Furfaro: Thank you for the clarification. Thank you Mike.

Mr. Chang: Chairman can I ask... has those amendments been circulated yet?

Mr. Furfaro: You can ask the Committee Chairwoman.

Chair Nakamura: I believe they have. Do you have a copy of this letter from the Planning Department August 22?

Ms. Yukimura: Chair Nakamura, I am going to be proposing amendments in accordance with the letter that came from Planning. The recommendations and letter that came from Planning but that's what we're going to hear about right now. I don't believe the amendments have been circulated. I think that letter has...

Chair Nakamura: Can you please circulate them? Yes...

Mr. Furfaro: Thank you.

Ms. Williams: Alright we'll do a brief PowerPoint on the amendments that are before you.

Mr. Furfaro: Excuse me Marie, so I'm clear with all the members because I'm not a member of this Committee, Mike was there a cover letter that the Department sent over to the Council prior to the actual distribution of this amendment, is there a cover letter?

Mr. Bynum: Here it is.

Mr. Furfaro: Oh, we have it now. Do all members have that? Thank you. Marie, my sincere apologies.

Ms. Williams: We're going to do a brief PowerPoint and the PowerPoint will go over the proposed amendment which really focuses on Section 28.3 of draft Bill 2410, and then we'll go over some scenarios as well that could result from the change. As you might remember from the last time we were here, this is the process, the allocation process under the existing draft Bill 2410. The red circle shows where the changes that are being proposed will be and it really focuses on how we will determine the number of TAU certificates that will be made available to prospective permits for TAUs. Again I'll just quickly go over what that process is and it's outlined in Section 28.3. Essentially at the beginning of every cycle the Planning Commission would adopt the number of TAU certificates that would be provided and that number would be determined according to the number of TAUs and our base year and we would multiple that by seven point seven, three percent (7.73%) which is equivalent to one point five percent (1.5%) growth over the prospective five (5) years. We would add to that number any lapse or an allocated certificates from the previous cycle as well and then if need be we would take up to twenty percent (20%) of that number and use it to account for excess growth that might come from our backlog of projects. This is what it looks like. "B" represents our base year and if for example we find that growth is above our target, we would consider that growth to be debt that needs to be paid off and that's represented in the orange box. Then when we calculate the allocation for our cycle, we would again use the seven point seven, three percent (7.73%) of the base but then take twenty percent (20%) of that number and use it to pay down the debt, leaving eighty percent (80%) of that number to be made available in the cycle.

That's how the current Bill works but the amendment before you changes quite a few things. First of all, instead of calculating the allocation using the seven point seven, three percent (7.73%), we are proposing to calculate it using five point

one percent (5.1%) which is equivalent to one percent (1%) growth compounded over five (5) years. This really is because we understand that there is a backlog of projects that might come online pretty fast and so we would lower our first..the number of certificates that can be available to reflect that just in case. What also happens is that to account for both low growth and high growth scenarios that there are two (2) roads that we can take. When our next cycle comes, we would look at our base year. We would see how growth has been and if it in fact has exceeded what is equal to one point five percent (1.5%) growth over that time, then we would subtract from the five point one percent (5.1%), fifty percent (50%) of that number and to essentially to lower the amount of certificates that we can give out. If in fact growth has not breached our target, we would add fifty percent (50%) to that number. Let me show you what that would look like and also in creating this new system, you can see that and no longer do we have a provision for our so-called debt pay down of twenty percent (20%) and also no longer would we bring lapsed certificates into the equation as well.

To implement this, there is a new definition that would be added called "allocation base year TAU target" and essentially all that is, is our slope, the curve that's equal to one point five (1.5) average annual growth over the period of time, from base year to base year. The slope is represented by the purple line and so that's what our target would be.

In a low growth scenario, you can see that if you start at our first base year, our first allocation would be five point one percent (5.1%) of that and then we come to base year two (2), if we find that growth in fact is below the target, you can see that it is here, then our subsequent allocation would be seven point six, five percent (7.65%) which is essentially five point one percent (5.1%) plus fifty percent (50%) of that. That would be accommodating more growth because we can do that.

In a high growth scenario, our first cycle looks the same but we come to our second base and we see that growth has exceeded, what the purple line is. We're going to lower what the allocation is and it would be equivalent to two point five, five percent (2.55%) of the base which is the same as point five percent (.5%) growth over the five (5) years. We would just keep doing that until we find that our inventory growth comports with the target. So essentially we'll do that until we reach the purple line again.

Again, just in summary this is what the current allocation process is and the amendment before you would change those portions there and it would look like this. Our allocation is determined by five point one percent (5.1%) of the TAUs in our base year and we have option one (1) and option two (2) depending on whether we have met the target or not. You can see that it simplifies the process somewhat. In summary and you have the amendment, the memo before you, but this would require us to delete the definition for "Pro-rata allocation." We would delete Section 8-28.3 "C" which would allow us to bring lapsed and unused certificates to the equation. We would add in a new definition "allocation base year TAU target" and then modify Section 28.3 "B" to accommodate the five point one percent (5.1%) into two (2) different options.

That's it, thank you.

Chair Nakamura: Is there any questions for Planning Department? Councilmember Yukimura.

Ms. Yukimura:
question is.

Thank you. Thank you Marie and Mike. My

Mr. Furfaro: Excuse me, Vice Chair..I think it would be wise that what was presented to us was an amendment by them. I would strongly suggest that at least the motion to accept or approve of the amendment be on the agenda for the Council first before we start to have some dialog. That would be my recommendation.

Mr. Bynum moved to approve Bill No. 2410, seconded by Mr. Chang.

Ms. Yukimura moved to amend Bill No. 2410 as circulated, as shown in the Floor Amendment which is attached hereto as Attachment 1, seconded by Mr. Bynum.

Ms. Yukimura: My question is "allocation base year TAU target," if you could just further explain that. You're taking a slope over a longer period of time, is that what you're doing?

Ms. Williams: I believe that it reads that the target would be the number of TAUs, essentially our inventory on December 5, 2008, increase by one point five percent (1.5%) every year, so essentially it would be a straight line going up from 2008, equivalent to the one point five percent (1.5%) over time.

Ms. Yukimura: What also matters is the length of time?

Ms. Williams: Yes because it's growth rate, and therefore compounded, our actual number does increase over time every year.

Ms. Yukimura: That's why you were changing it to one percent (1%) for the first five (5) years but it's still one point five percent (1.5%) for ten (10) years?

Ms. Williams: The target is one point five percent (1.5%) but our first allocation will be less than that. And just in consideration that we do have a backlog.

Ms. Yukimura: Okay so explain to me the backlog.

Mr. Dahilig: So we are aware of that the previous transmissions that there are exempt projects and projects that would qualify for some type of exemption throughout the process outlined in the Bill. That figure is approximately, what we have shown in the previous slides, are around four thousand (4,000) units and there have been some concerns about how to address the backlog of these units and the context of future growth. The previous process that has been laid out was to take a look at inventories and try to create some type of debt system that you would hack down the amount of growth by twenty percent (20%) should debt be actually realizing. The problem that we recognized in by having that system is that it would create an inventorying situation for the Department where we'd have to create essentially a bank account..

Ms. Yukimura: Essentially what?

Mr. Dahilig: Essentially create a bank account and then try to cross reference that with a data point that is not produced by our

Department. Specifically that's the data point that is produced by the Department of Business and Economic Development and Tourism and so in light of the fact that there's this recognition of trying to accommodate for this backlog. What we're proposing is something a little simpler in that there's recognition of the amount of certificates is actually that is allowed is actually lower than one point five percent (1.5%) per year, instead it's one percent (1%) a year but the targets are still one point five percent (1.5%). So that way when the DBEDT numbers come out on a (inaudible) basis, that we can recognize whether the backlog of units are coming online are actually being absorbed through the DBEDT census. If the DBEDT census does show a growth rate within a five (5) year cycle above the one point five percent (1.5%) targets then the mechanism as proposed would either tack up or tack down the amount of allocation that is available for each cycle based on the DBEDT census.

Ms. Yukimura: You said that the backlog is four thousand (4,000) units now?

Mr. Dahilig: Well it's based on the numbers that..when we look at permits that are class four (4) zoning permits as well as potential other units that, projects that are out there that have received some type of approval..again the (inaudible) judgment has been made (inaudible)..

Chair Nakamura: Excuse me Mike.

Mr. Dahilig: Yes, go ahead.

Chair Nakamura: Councilmembers at the last Committee Meeting, this PowerPoint presentation was handed out and the list of the projects he's referring to..I don't know if you have this copy, if not we can have staff make copies for you, but this is the list he's referring to, this list of four thousand six hundred and fifty (4,650) units.

Ms. Yukimura: Okay.

Chair Nakamura: Would you like a copy made?

Ms. Yukimura: I have a copy, thank you.

Chair Nakamura: Would it be helpful?

Ms. Yukimura: No, thank you.

Chair Nakamura: You don't need one, okay.

Ms. Yukimura: Okay but as I understood those were not clearly defined in terms of which category they go to.

Mr. Dahilig: Correct but the issue is that we know they exist and they could come online outside of the process and what we've heard from.

Ms. Yukimura: Outside of the process meaning?

Mr. Dahilig: Outside of new allocation.

Ms. Yukimura:
the definition of the Bill are exempt?

Okay, alright. Those are the ones that are in

Mr. Dahilig:
non-applicable.

They could be that pool, exempt or

Ms. Yukimura: Okay. And because they exist you're suggesting this process of decreasing the slope in the first five (5) years?

Mr. Dahilig: Keeping the slope at one point five (1.5) but decreasing the actual allocation. What we understand from the way the Charter amendment is written, the Council has the authority in enacting the ordinance to go up to one point five percent (1.5%), and it's the target that is outlined in the Charter. What we're proposing is that the Council only delegates one percent (1%) a year versus one point five percent (1.5%) a year to the Commission. In that consequence you are creating a lower level of prospective growth while recognizing that you're going to have units that are from the exempt or from the non-applicable categories still come online and be reflected in the DBEDT census.

Ms. Yukimura: Okay, so at the end of five (5) years, you're going to take the DBEDT census?

Mr. Dahilig: Number, yes.

Ms. Yukimura: To see what the excess is?

Mr. Dahilig: Or if there's not excess.

Ms. Yukimura: Right.

Mr. Dahilig: Yeah.

Ms. Yukimura: And then if there is excess, then in the next five (5) years.

Mr. Dahilig: Then the.

Ms. Yukimura: It's a fifty percent (50%).

Mr. Dahilig: Decrease in allocation availability.

Ms. Yukimura: Okay and if it's not an increase but in fact lower than the target, then you're removing the fifty percent (50%) entirely?

Mr. Dahilig: Then you would go the opposite direction. Let's say cycle one (1), you're at five point one percent (5.1%), at the end of five (5) years you'll see and maybe Marie can go back to the slide. maybe go high growth and so at year zero (0) which is the first allocation, we'd be at the five point one percent (5.1%) and when we take a look at the DBEDT census in the next cycle, we see an excess that we're over the one point five percent (1.5%) target. At that point we would lower the allocation based on what the DBEDT census is, so we'd take two point five, five percent (2.55%) of the DBEDT census at year five (5) and say this is the allocation for the next five (5) years. It's done as a mechanism to recognize that again we have exempt and non-applicable units that would be coming online and that if they are reflected, we want to try to bring the rate of growth as close to the

one point five percent (1.5%) target as possible. For an operational standpoint, it avoids us having to keep an inventory of exempt and non-applicable units and essentially try to cross reference with the DBEDT census because that could be problematic for us.

Ms. Yukimura: Okay. I need some time to think about it.

Chair Nakamura: Councilmember Bynum.

Mr. Bynum: Thank you for this presentation and I think this mechanism you've come up with addresses some of the concerns I had last time and it's created and appropriate. My question is more about..to just make sure my understanding is clear, you provided us a list of projects that potentially are exempt but the Bill has a mechanism to make that determination, is that correct?

Mr. Dahilig: Yes that's correct Councilmember.

Mr. Bynum: So I just want to underscore that that for instance if you have a class four (4) zoning permit, you'd be exempt if you met the conditions of that permit and you didn't make changes, is that correct?

Ms. Williams: In that case you wouldn't have to..because the Bill again only applies to the zoning use subdivision or variance. So if you don't have to come in again to the Planning Department for one (1) of those, you no longer have to comport with the requirement to obtain the number of TAU certificates for your project.

Mr. Bynum: Right.

Ms. Williams: So as long as they're class four (4) which is their final discretionary permit is valid and they move forward according to those conditions, they won't have to come in and even be subject to the Bill.

Mr. Bynum: Right.

Ms. Williams: Because they don't..the Bill is tied to those four (4) permits.

Mr. Bynum: Right but..all of those projects don't have the same set of conditions and circumstances right?

Ms. Williams: That's correct.

Mr. Bynum: And so if there was a project that had the class four (4) zoning but they had not met the conditions, they may not be an exempt project, potentially?

Ms. Williams: That's correct.

Mr. Bynum: Or whoever held the class four (4) zoning permit wanted to make substantial changes to the condition that would be like a new application?

Ms. Williams: Yes.

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Mr. Bynum: Or whoever held the class four (4) zoning permit wanted to make substantial changes to the condition that would be like a new application?

Ms. Williams: Yes.

Mr. Bynum: I just wanted to make sure I have that. And the Bill creates a mechanism to make that determination in a given period of time?

Mr. Dahilig: The Bill does not have a mechanism to... in that circumstances where you're saying there's a substantial change for a permit. It refers back to what the practice (inaudible) under the CZO that if you are permitted for a certain type of project with certain exactions or levy, that if there's a substantial enough change to that projects that it has to go back to the Planning Commission for re-approval or reevaluation. The mechanism is already built into the CZO for that standpoint.

Mr. Bynum: Right.

Mr. Dahilig: So this Bill wouldn't address those non-applicable types of permits.

Mr. Bynum: And without going into any specifics, some of those circumstances would be clear, others would be subject to a determination.

Mr. Dahilig: And that determination really comes as a consequence of vetting through the Planning Commission because ultimately those are their conditions that they have the authority to interpret and enforce, as well as my Department in terms of managing those permits, but ultimately, if there's a revocation type scenario or a modification type of scenario that that falls as a consequence of the Planning Commission's authority.

Mr. Bynum: Right. With mechanisms that are already in place?

Mr. Dahilig: That's correct Councilmember.

Mr. Bynum: Thank you very much.

Chair Nakamura: Any other questions? Councilmember Yukimura.

Ms. Yukimura: Even though you are not using the figures of exempt and non-applicable, right? You're trying to avoid using them?

Mr. Dahilig: Avoid using?

Ms. Yukimura: The formula.

Mr. Dahilig: Maybe you could elaborate more Councilmember?

Ms. Yukimura: Maybe you're not using them but you are still able to track how many units are in the exempt and the non-applicable category?

Mr. Dahilig: Ultimately we would have an idea of once... let's say the Legislation does move forward and it is approved, we would then have a certain type of inventory in-house that we would say "who's non-applicable and then who's applied for the exempt and who do we actually grant exemptions to?" But the concern that we have is by relying on the inventory to create prospective

allocations becomes a bit muddy as a consequence of us relying on a figure that's essentially created by a separate department which is DBEDT. Marie can anecdotally say that and I'm sure she can confirm this in conversations with me that DBEDT is not very open with how... I guess their work product when it comes to actually coming up with the census. And she can elaborate on that more but the concern is we don't want to be held hostage to another department by having to cross reference our inventory by their inventory because what we're saying is the DBEDT census is the real on the ground, online numbers, these are the units that are actively being used through their census methodology and being reported and that really is what has the effect of... the tourism impact of the island. So that's why we're relying on that number.

Ms. Yukimura:

Okay, thank you.

Chair Nakamura: Any further questions for Mike or Marie? Thank you and we'll ask for further public testimony at this time. Do we have a list of people who would like to testify? Okay, so... please come up if you would like to testify on this Bill.

Mr. Furfaro: Chairwoman may I suggest also if they'd like to fill out a slip to give to the staff if they wish to testify.

Chair Nakamura: If you would like to testify, please fill out a form at the front here and we'll do it in order of signing in. Thank you Carl. You can come up, you're first.

CARL IMPARATO: Aloha Councilmembers, my name is Carl Imparato and today I'm speaking as an individual because there's been no time to review the proposed Bill amendments by other members of the coalition for responsible for government. The proposed amendments seem to me to be a very reasonable approach for credibly dealing with the reality that we have a very large backlog of approved but not yet built transient accommodation units. While staying within the range allowed by the Charter amendment over long term, say twenty (20) years, the amendments would improve the Bill greatly. First they would deal with the key problem by changing the currently proposed twenty percent (20%) hold back of certificates to something that ranges between thirty-three percent (33%) to sixty-seven percent (67%) depending on conditions. Secondly they would address the other methodology problems that I've raised in CRGs August 3 testimony to the Council. In effect what the amendments mean is that the County would remain overly cautious in defining vested rights and dealing with zoning estoppels issues with goals avoiding litigation from developers. That's overly cautious, but to balance that approach what the amendments say is that the County would hold back one, third (1/3) of the future TAU certificates based on the very reasonable expectation that a lot of that four thousand (4,000) back log will eventually be built. It would allow available certificates that aren't issued during the period to lapse rather than to roll forward into the next allocation period which also helps to buy down the backlog. If it turns out that a lot of the backlog is built soon and the number of actual TAUs exceeds the target level set by the one and half percent (1 1/5%) growth target curve, then there's a trigger to hold back two, thirds of the future transient accommodation units certificates until the actual number of TAUs is below the curve.

So there's a balance of interest there. Now is that balancing of interest ideal? The County can take a harder line stance in vesting, it could hold back more TAU certificates to buy down the backlog faster, or it could institute a moratorium on

new approvals until most of the backlog of existing projects have been built. Under those approaches, the Charter section 3-19 "C" requirement that growth not exceed one and a half percent (1 1/5%) per year on a multiyear basis could be met over a ten (10) year period rather than a possibly longer period of say... twenty (20) years. But on the other hand, I recognize the concern that a tighter definition on vested rights and a moratorium could mean greater litigation risk for the County. I recognize the reality that a lot of horses were let out of the barn between 2000 and 2008 and each of those horses has a lawyer in the saddle and getting them back into the barn would be a daunting if not impossible task. The earlier question, is the proposed balance of interest reasonable? And to me it seems to be the case that it is reasonable as long as there's also a good faith, long term commitment to three (3) other conditions which are outside the scope of Bill 2410. The first is that the County Council recognizes, embraces, and actively supports the vision of the people of Kaua'i on an ongoing basis.

Chair Nakamura: Three (3) minutes; you have an additional three (3) minutes.

Mr. Imperato: Thank you. That vision was that the people want Kaua'i to retain its rural character and not become another Maui, that they want economic diversification rather than more and more reliance of tourism. So as long as the Council supports the spirit of the Charter amendment by not creating new problems through future rezoning to resorts and future expansions of the VDAs and other development policies then that's consistent. Secondly, the Planning Commission should recognize when future TAU projects come before the Commission if this Bill passes, that it has a duty to truly ensure that the project's impacts are fully mitigated as a condition of approval. Impacts include cumulative development impacts, secondary as well as primary impacts and island wide impacts, not just the impacts within one (1) mile of the project. If impacts can't be mitigated, then projects should not be approved. That would be the Planning Commission embracing the spirit of the Charter amendment. And finally, there's an upcoming General Plan and we hope that that General Plan recognizes the will of the people of Kaua'i and is not biased against that will, that the plan shouldn't be stacked through its design or public participation processes against the people. It should explicitly include requirements and triggers to make the General Plan truly a binding document rather than a vision. So those are outside the scope of the Bill and they really sort of good faith understandings that the Charter amendment actually assume, because the Charter amendment really what it did is it gave to the Council the authority to move forward with the understanding of the Council is accountable to the people and do a good job of trying to represent the will of the people.

So with these understandings I think the framework that's been proposed in this amendment goes a long way towards creating a methodology that within the Bill complies with the spirit of the Charter amendment and the will of the public. If the Bill is amended to incorporate these amendments, I believe there'd still be some work to do in some other areas of the Bill to iron out some details in the language which could possibly lead to ambiguous interpretations in the future. But that's getting to the last ten percent (10%) of the issues there; I think the (inaudible) would have been handled through this floor amendment. So I thank the members of the County staff who have been so gracious to work with us to respond to the concerns that we've raised over the past weeks. I thank the Councilmembers who will support these amendments and I thank all of you for your attention.

I would want to make one (1) more clarification regarding that scenario there. Reading that language and it has triggers and basically what this says... is that you have one percent (1%) growth curve, unless you have so much growth that you would exceed the target, then you'll go to a half percent growth for the next five (5) years. It says you go to a one and a half percent growth if you are less than the target and if you've had a decline in the number of units from one (1) year, five (5) year period to the next. So it's just minor clarification, I don't think it was clear in the presentation.

Chair Nakamura: Okay. Maybe you can work with Marie to clarify the representation.

Mr. Imperato: Okay.

Chair Nakamura: Councilmember Chang has a question for you.

Mr. Chang: Carl thank you, I don't believe we have a copy of that testimony, the statements you are reading?

Mr. Imperato: Right, I've got to give that to you. I prepared this in the hope that there'd be a floor amendment.

Mr. Chang: Oh okay.

Mr. Imperato: I didn't want to assume that.

Mr. Chang: If you could just send that when you're ready.

Chair Nakamura: Councilmember Bynum.

Mr. Bynum: Carl, thank you for this excellent testimony because you pointed out several things that the Planning Department didn't that basically this has flexibility. The last time you testified, the last time we were here discussing this it was kind of like, well the twenty percent (20%) is sufficient because we're never going to have that high growth scenario, and I recall your testimony saying, we have to have a Bill that deals with all potential circumstances whether they're likely or unlikely, and I really heard that loud and clear. I think this amendment goes further to address that. Then what I thought in terms of like you're saying based on what actually occurs, there's different outcomes right? If we do have that high growth scenario, the reduction as you mentioned is sixty-seven percent (67%), if we don't, the reduction is less, right? I like this amendment and I'm glad to hear you like it as well. My question is does it meet those criteria that you set out before that we are now meeting... that the Bill addresses any potential growth scenario no matter how unlikely?

Mr. Imperato: I believe it does. The question is how credibly does it address the extreme scenarios and by my count if we assume that there's four thousand (4,000) units that are in the backlog already built but not yet approved, let's say... just a rough number... and assume that some projects will fall by the wayside, some small percentage, by my own account what's a credible scenario with this approach it would be to say... ten (10) or fifteen (15) years to achieve compliance with the multiyear average growth requirement. If we go to a more extreme scenario where projects don't fall by the wayside, a much more

unlikely scenario, the Bill still does address that. It makes the multiyear criterion for achieving the target growth, probably puts it out to the twenty-five (25) year timeframe. But that's getting to a very, very unlikely scenario and even at that unlikely scenario, twenty-five (25) years is more or less consistent with the timeframe or a General Plan horizon. My personal feeling is that this approach does address all scenarios with good faith in terms of the spirit of the Charter amendment. There are people because like I said, I'm speaking for myself today... there are people who might feel that multiyear average that the Charter amendment states might... maybe it should be interpreted as five (5) years or ten (10) years. And there are some people who might say multiyear is fifty (50) years. So there's going to be a range, there's going to have to be discussion, let's put it this way within the members of the public. My personal feeling is that this is fair.

Mr. Bynum: I heard your three (3) conditions at the end that it was based on these assumptions and I just want to agree with you that this is only one (1) of the issues that addresses the vision of maintaining rural character, that there's other work for the Council to do in other areas to fulfill that vision, and to see that we have regulations in place that do that. So thanks.

Mr. Imparato: Thank you.

Chair Nakamura: Thank you Councilmember Bynum. Any other questions for Carl? Yes, Chair Furfaro.

Mr. Furfaro: I am a non-Committee member, so Carl I just wanted to revisit this, you are not speaking with this testimony for the group CRG?

Mr. Imparato: Correct. Today I'm not because this is something that just popped up very recently and so it would be presumptuous to assume that others feel this way.

Mr. Furfaro: I just wanted to note, in your testimony you start off as you're speaking for an individual.

Mr. Imparato: Yes.

Mr. Furfaro: But you went from first person singular to first person plural a few times.

Mr. Imparato: Okay.

Mr. Furfaro: We... us and so forth. Is this something you plan to share with the group?

Mr. Imparato: This is something that will be shared and I will strongly advocate for.

Mr. Furfaro: Thank you very much for your testimony today. Thank you Chairwoman.

Chair Nakamura: Thanks Carl. I would like to call up the next person to testify. Glenn Mickens.

GLENN MICKENS: Thank you Nadine. For the record Glenn Mickens. I have a short testimony; you have a copy, let me read it for my viewing public please. I understand that the Council may have concerns about the possible legal rights of the sixteen (16) property existing resort projects (ERP) owners who are to be granted exemptions under the Bill. I believe that the Council should have far more concerns about the problems the County will have and the concerns of its citizens if the Bill is enacted in its present form.

Although the state of the economy does not make the building of the ERP imminent, it is quite likely that in say fifteen (15) years a large segment of the four thousand six hundred fifty (4,650) transient accommodation units (TAU) identified by the Planning Department will be built in these projects. In addition non-ERP owners will be eligible to build up to eighteen hundred (1,800) TAUs in that period. That means that in 2026 there could be more than five thousand (5,000) new TAUs or sixty percent (60%) more than the nine thousand (9,000) plus amount of TAUs at this date. The new units would be about two hundred fifty percent (250%) of the units contemplated during that time by the General Plan or would be allowed under the Charter amendment growth rate.

As essentially all of these new units would be built in visitor destination areas, the eastern corridor of our island from Princeville to Kōloa will be urbanized. The Council should be aware that the large majority of our citizens would like to see Kaua'i as Carl mentioned, would remain semi-rural but this would not happen with the proliferation of development potential.

But probably more troublesome is that the new units will overwhelm the infrastructure of our island. With five thousand (5,000) new tourist accommodations, we would have a ten thousand (10,000) plus expansion in our on island population and many, many more cars. Our already inadequate roadways would be overtaxed as would many other facilities.

Wouldn't it be far better to avoid another "ready, fire, aim" and follow the suggestion made by Walter Lewis and others which he said at our last hearing, defer any action on new transient accommodations until we have registered the owners who have received some preliminary approvals from the Planning Commission and obtained relevant information from them and then construct a Bill that properly reflects the position.

Anyway I think that's the most important thing that I think we can do is you know, before we pass a Bill, I think we should make sure that we have all the facts in place first. Thank you Nadine.

Chair Nakamura: Thank you Glenn. Are there any questions for Mr. Mickens? Thank you. Can we have the next person?

Ms. Simao: Tom Shigemoto followed by David Arakawa.

TOM SHIGEMOTO: Good morning. Sorry I didn't sign up earlier. I have more questions than actually comments to make. You know we've been talking up till now about this one and a half percent growth rate and how to address the backlog and all that. My question regarding this particular Bill is what happens when the new General Plan is updated? Does the growth rate we're talking about carry over? Would there have to be a new Bill introduced and we'd go over this all over again? So basically what I'm asking is in some section, in the applicability section perhaps, that there's some language inserted that ties the

Charter amendment provisions regarding a new General Plan update and so we don't have to go through this all over again. Thank you.

Chair Nakamura: Are there any questions for Mr. Shigemoto?

Mr. Bynum: Good morning Tom and thanks for your testimony. You ask a good question and I don't have an answer right now but I want one.

Mr. Shigemoto: Yeah, I didn't think so but it's something to consider.

Mr. Bynum: It is. I just want to know with the amendment that we had described to us, whether you will be comfortable with that or have any objections to that amendment?

Mr. Shigemoto: I'm not really smart with numbers so I think I understand where the Planning Department is coming from but I would have to withhold my response until I fully grasp what they're talking about.

Mr. Bynum: Okay. Thanks.

Chair Nakamura: Any other questions for Mr. Shigemoto?
Okay, thank you.

Ms. Simao: David Arakawa:

DAVID ARAKAWA: Good morning Committee Chair Nakamura and members of the Committee and also members of the Council. My name is Dave Arakawa and I'm here to testify in support of the Bill who does recognize vested rights and equitable zoning estoppels. I can go quickly through the headlines of our testimony. The first point on page two (2) is that we do think that the findings of the Bill should reflect what's in the Kaua'i Planning Department staff reports that the Charter amendment TAU growth cap is actually inconsistent with the Kauai General Plan and that's an important finding to be in legislation because that would give justification because it's inconsistent. They're unintended consequences and that's why you need to do things like have exemptions or have projects that would explain the need for those types of changes and those types of things in the Bill. We do also want to also again emphasize that vested rights and zoning estoppels will trump any votes on a Charter amendment or legislation. We do recognize that the exemptions and the recognition of inapplicable projects are based on fairness, equity and legal principles and the fact that... we are also pleased that the legislation holds exempt means exempt, so that's a good thing. The three (3) other remaining issues that you folks asked for clarification as to find case law and clarification was one (1) that seems to be already covered, it looks like it's covered in the law but just needs a little clarification or may need clarification is that remaining resort-designated parcels... so say it's on the General Plan as resort part of a three (3) phase resort project and the first two (2) phases have their zoning already built but as a condition of the discretionary permits for the first two (2) phases, the County required the landowner or the developer to build the full infrastructure even for the phase three (3). Okay, phase three (3) wasn't even permitted yet but they require them to. So there's a line of cases on the mainland that said fair is fair, you should allow... you cannot stop that remaining parcel from going through the process, they still have to go through process, it's not guaranteed they get to do it. They still have to go through the full process but should not stop them from going through the

process, so that's the first issue and we've added some language down there. Again it's focused not necessarily, this is an equitable estoppels issue, and it's not vested, so focus is on the action of government. When government looks at a project, a phased project, and says look this is too big, you got to do it in phases say one (1), two (2) and three (3). So government is saying you cannot do all this at one (1) time and then government say's okay we'll grant you the first two (2) constructed but when you construct it, you build the infrastructure for the last phase.

Chair Nakamura: Mr. Arakawa, you have used your first three (3) minutes but you have three (3) additional minutes.

Mr. Arakawa: Oh I'm sorry. The last thing is the definition of substantial sums and while we do recognize that the Planning Department and Corp Counsel worked hard on that, we do believe that in doing the research and we've provided a list of cases for you folks that the provision as it stands now is not consistent with what's provided for by case law in Hawai'i. Kaua'i doesn't necessarily have to follow it, you don't have to follow the case law but we thought it might be easier in the future if somebody challenges that it stays within the case law. We've laid out here, it goes anywhere on page four (4) from thirty-eight thousand (38,000) to half a million in some cases. So it's everywhere in between. Your Bill has that twenty percent (20%) threshold also, so that has never been adopted by any jurisdiction in Hawai'i but that doesn't mean you folks can't, you folks can. And the things that are considered in there and the current Bill excludes planning and permitting but when you look at all the other cases in Hawai'i, they do it. This twenty percent (20%) requirement of the real property value that could be troublesome in some cases. It could be really hard if a developer buys land at a high cost to spend say a hundred million and the property is worth a hundred million, to spend twenty million before they even get to dig in the ground, hard to spend that much money. What we propose is something that involves both, gives you your twenty percent (20%) because the twenty percent (20%) would help small landowners, so we propose something and it's in there. We have provided a list, professional services planning, planning and permitting, architectural engineering, archaeological, advertising... my favorite legal consulting... probably not your favorite but... and you know what I left out but maybe should go in there, finance, points of promissory notes, maybe... up to you folks... it's covered in one (1) of the cases. That's our testimony and we can work with your Planning Department or you folks or the Corporation Counsel in providing these cases, I'm sure they have access to the law cases. Thank you very much and you know we're very impressed by the job that the Planning Department has done, you folks as the Planning Committee and Corp Counsel. The proposed amendment sure sounds reasonable but we have to take a closer look at it; there might be inadvertent consequences. Thank you.

Chair Nakamura: Sure the Committee recognizes that this is the first time any of you are seeing this revised proposal, so that's totally reasonable. Any questions for Mr. Arakawa?

Ms. Yukimura: Hi. On your first point about the inconsistency with the Kaua'i General Plan, would not the Charter amendment actually be a modification of the General Plan?

Mr. Arakawa: No. The Charter amendment does not amend the General Plan; they're two (2) different things.

Ms. Yukimura: But it's a higher law though.

Mr. Arakawa: You know what it's a higher law but you know what there's something else that trumps it, the vested rights.

Ms. Yukimura: I don't agree with that.

Mr. Arakawa: Okay.

Ms. Yukimura: I mean I don't disagree with that but we're not just dealing with vested rights, we're dealing also with the... a statement of what the goals for growth are by a community.

Mr. Arakawa: Okay by thousands of voters in the community... and I'm not even sure that that's the majority of the population of Kaua'i.

Ms. Yukimura: Well it's a Charter amendment that's been approved according to... unless you're challenging the validity of the Charter amendment?

Mr. Arakawa: No, no but they throw out things like the will of the people, will of the people but in the whole line of cases, I've talked about this over again and we've had that happen in Honolulu, hundred sixty-eight thousand people in Honolulu voted for that Sandy Beach, to revoke the zoning on Sandy, a hundred sixty-eight thousand...

Ms. Yukimura: Again I am not... I'm not talking about how it interacts with vested rights, I agree with you.

Mr. Arakawa: No, no...

Ms. Yukimura: That the Charter amendment or any vote of the people cannot reverse vested rights.

Mr. Arakawa: Okay.

Ms. Yukimura: But in setting the goals or the sense of what growth should be... to me the Charter is the higher law and so if there are inconsistencies, it's actually a modification of the General Plan. It's a legitimate modification of the General Plan.

Mr. Arakawa: Well you know...

Ms. Yukimura: If there are any inconsistencies then we would follow the Charter rather than the General Plan.

Mr. Arakawa: I don't think legally that this Charter would...

Ms. Yukimura: Except as to vested rights, we cannot change that. That's absolutely true.

Mr. Arakawa: Yes. I would disagree with that because.

Ms. Yukimura: Okay.

Mr. Arakawa: Because in Honolulu the Sandy Beach law was an ordinance, it was an ordinance. So it was the highest law of the land at that time and that was ruled illegal. No matter how high of law you have, it's not consistent and that wasn't consistent with the General Plan too.

Ms. Yukimura: Okay, thank you.

Chair Nakamura: Councilmember Yukimura, I think that's a good follow up question that we should explore with the County Attorney's Office.

Ms. Yukimura: That's fine with me... except that it's not... unless we're going to make some changes based on the fact that... on the premise that the Charter amendment is inconsistent with the General Plan and that we should follow the General Plan.

Chair Nakamura: Yeah and that's why... because the testimony talks about the finding or making it a finding, I think we need to have that clarification that you're raising.

Ms. Yukimura: Okay, that's fine.

Chair Nakamura: Do you have any other questions for Mr. Arakawa?

Ms. Yukimura: Oh no, I'm done.

Chair Nakamura: Mr. Bynum.

Mr. Bynum: Good morning.

Mr. Arakawa: Good morning.

Mr. Bynum: I want to thank you for your testimony. I always appreciate your testimony, I learned a lot from it over the years, the new site cases that allow me to be able to go out and look and get other perspectives and other interpretations...

Mr. Arakawa: I've learned a lot from you folks as well.

Mr. Bynum: So thank you. Fascinating you just had with Councilmember Yukimura, I agree with her...well I don't disagree with either of you that the way the Charter said... you could argue was not consistent with the General Plan. The Planning Department started up by pointing out that the General Plan says these shouldn't be seen as rigid but as kind of like guidelines right. But on the other hand, we subsequently had a citizen's vote on the Charter amendment that has not been challenged legally and it's the law of the land and I think regardless of what the General Plan says, I believe Councilmember Yukimura is correct. But you're also correct though that if there's established vested rights, no matter what the Council or the citizens say, the Supreme Court of the United States or the State of Hawai'i can trump that and has. That is a fascinating debate, it's happening all over the Country, right? What are the community's rights versus vested rights and property rights and it's something that we've engaged in ever since I've known you right and won't end. My question is, I think the Planning Department along with the citizens groups and the members of our Planning

Committee and not me because Councilmember Yukimura and Councilmember Nakamura as the Chair and Vice Chair has been taking the lead on this, we've come up with a thing that may avoid us getting into those legal battles. My dad always told me to avoid litigation at all cost and I think that's good advice. If there's a way that you can work together as a community and meet your needs in a mutually beneficial ways and avoid contentious legal proceedings, that's... isn't that good for everybody?

Mr. Arakawa: Except for law firms but good for everybody in general. Sorry Mr. Castillo. Yes I would agree and I think the proposed Bill goes long, long way and I think the community groups and the Planning Department, and you folks and Corp Counsel have worked really hard to try to avoid litigation. We would commend you folks on it.

Mr. Bynum: And I commend... I mean this is great if this is the kind of the thing we can do on Kaua'i if we all put our heads to it, get together and say hey how can we find the way that we can accommodate the concerns and make compromise and so I'm going to hold my breath and hope that this whole discussion doesn't generate into that kind of contentious, win/lose kind of situation. I really want to commend those that have worked on this, coming up with some really creative and thoughtful proposals, even in the two (2) weeks since we've met to address the testimony we've received here. So let's keep on that track if we can.

Mr. Arakawa: And I like kidnap you folks and take you folks to other islands so you can take charge of those islands too.

Mr. Furfaro: We're very happy on Kaua'i.

Chair Nakamura: Any further questions? Yes Chair Furfaro.

Mr. Furfaro: Just certain clarity and maybe we can follow up to this, just so we don't get confused on the Sandy Beach piece.

Mr. Arakawa: Sure.

Mr. Furfaro: There are only certain parts of that that went to the Supreme Court. The process is District, Circuit... I don't even think some of the pieces went to the Appellate and I just wanted to make sure we caution ourselves when it comes to your comments to this Council on legal items and resurface that with our own legal team.

Mr. Arakawa: Correct.

Mr. Furfaro: There are reports that the City and County of Honolulu settled at the Circuit Court level.

Mr. Arakawa: Yes that was at the Circuit Court level, the final settlement estimated about sixty - seventy million was after ruling at Circuit Court, we decided, not County, as Corp Counsel at the time, so I said "we", sorry but decided not to appeal that to the Supreme Court and we went with Judge McKenna's ruling, she's now on the Supreme Court but we went with Judge McKenna's Circuit Court ruling. There had been other issues on Sandy Beach that did go up to the Supreme Court, so you're correct.

Mr. Furfaro: Thank you for that clarification, thank you
Chairwoman.

Chair Nakamura: I would just like to thank you very much for your testimony today and especially on page four (4) of your testimony the examples of cases and your suggestion of how we might address the concerns you raised. So thank you very much.

Mr. Arakawa: It was a team effort.

Chair Nakamura: Okay, good. Thank you. Anyone else who would like to testify? Ken Taylor?

KEN TAYLOR: Chair, members of the Council, my name is Ken Taylor. I first like to read the last paragraph of Glenn's presentation which I agree with, wouldn't it far better to avoid any other ready, fire, aim and follow the suggestions made by Walter Lewis to defer any actions on transient accommodations until we have registered the owners who have received some preliminary approvals from the Planning Commission and obtain relevant information from them and then construct a Bill that would properly reflect the position. I would also like to comment on something that Carl rose in his presentation when he indicated that between 2000 and 08 there was a lot of horses left out of the barn and now we have to deal with that but it's like digging a hole, you don't keep digging when you're trying to get out of it. In this case we need to close the barn door until we resolve this problem and get back to the right numbers going forward and the only way to do that is a moratorium. I believe, your obligation in this is that an ethical, moral approach to upholding the Charter, you have an obligation to close the barn door until we get all the horses under control and I don't see by allowing people to continue to come in applying for projects that we ever resolve this problem. I think a moratorium is in order, I know nobody likes to talk about moratoriums but I think again as I say you have an ethical moral obligation to uphold the Charter and the Charter requires getting this one and a half percent growth rate in this area under control. I hope you will look at that very carefully as well as the recommendations Glenn made in his presentation. Thank you.

Chair Nakamura: Thank you Ken. Any questions?
Councilmember Bynum.

Mr. Bynum: I'll save it for comments.

Chair Nakamura: Chair Furfaro.

Mr. Furfaro: (inaudible) the parts that he just referenced between 2008 and 2002... there's the zoning as many of these parcels of land that happened way before 2002 and then there's the action of the permitting process of what was already zoned being approved at the Planning Commission. It's very important to understand that that is the process and over that time this Council has found itself taking on requirements that actually help to downzone the density, whether it was at Kukui'ula or other areas. So I just want to make sure that we understand that the Charter gave this Council the authority to control the barn door. But prior to that, once the lands were zoned, the control of the barn door, as you used... was really at the Planning Commission. That was the real challenge establishing this growth which in the General Plan is like two point two percent (2.2%) but let's not confuse the zoning that happened with many of these parcels

back in the 70s, 80s, and 90s with the control of the door, which is what the Charter amendment is trying to address now. No question, it was just a statement.

Chair Nakamura: Any other questions for Ken Taylor? Okay, thank you Ken. Would anyone else like to come up and testify?

JONATHAN CHUN: Good morning Chair, Jonathan Chun. I'm sorry I did not sign up earlier. I was looking at the...

Chair Nakamura: Is your microphone on Jon?

Mr. Chun: In looking at the proposed ordinance and I have two (2) concerns that I want to raise the issue, one (1) involving VDA and the other involving CPRs. On the VDA issue, I noted that the existing resort project even though defines existing resort project as any projects on any parcel or lots or zoning districts in the definition section, when it comes down to the actual exempting the existing resort projects, you're limiting only to those projects, that are in the VDA. I wanted to bring up a fact that there are a couple projects existing resort projects that are on properties that are not within the VDA that were built, as Chair Furfaro noted, in the 60s, 70s, and 80s and if you're not exempting those projects then legitimately they're operating, have been operating well within... for 60s, 70s, and 80s if you prohibited them from continuing, you are going to raise another constitutional question and there's no reason why you'd want to stop them from operating right now. I would suggest that maybe you want to relook at the restriction in your exemption that you're only going to exempt guys or projects that are within the VDA because there are projects that are not in the VDA. Second thing is our CPR issues, I just want to bring up the point that on CPRs under State law, CPR units are considered separate pieces of real property and I wanted to point that out that you might want to recognize that specifically in your ordinance where you talk about transient accommodation units on any lot or parcel entitled to more than one dwelling unit. CPR by State law both under HRS 5-14 (A) and 5-14 (B) specifically states that once a unit is created that unit is entitled to recognition as a separate parcel of real-estate. There's been discussion with the Planning Department on that and the reason why that's important is that they are existing back in the 70s, 80s, and even 90s that CPRs are not within the VDA, again the VDA issue that have TVRs in them and they've been operating well for many, many years even prior to 2008. If we're going to say that you're not exempt again you're raising a very serious constitutional issue. That's the only two (2) comments I have, both things... if the Council wants, I can put these comments in writing and I can make suggestions.

Chair Nakamura: That would be very helpful if you could do that.

Mr. Chun: Thank you.

Chair Nakamura: Councilmember Yukimura.

Ms. Yukimura: Thank you. Hi Jonathan.

Mr. Chun: Good morning.

Ms. Yukimura: First of all I think the definition of existing resort projects is inaccurate in that it doesn't really mean existing. The way I understand it to be is it's actually pending and I might make an amendment to

change that because it's kind of misleading and doesn't help clear thinking about this ordinance. The other question I have is which projects are not in the VDA that would be still pending?

Mr. Chun: Oh, pending?

Ms. Yukimura: Because we're not... yes... we're not talking about... in this particular section unless I'm wrong, we're not talking about buildings that are existing and occupied.

Mr. Chun: It's not clear in this ordinance. I've heard discussions on that, either we can clarify that in proposed amendments (inaudible) or you can clarify that in any report that the Council might want to do that.

Ms. Yukimura: Right.

Mr. Chun: But it is... yeah... I understand there is some confusion whether you mean pending or constructing.

Ms. Yukimura: Yeah I think the wording or naming of that category called existing resort projects is a bit misleading, so we may want to explore other words to describe that category. And then so the projects that you mentioned that are not in the VDA, are they already built and in operation?

Mr. Chun: Oh yes. The one that I can think of right now, they've been operating since 1969 renting out to visitors on a transient vacation basis and/or timeshare. It's a building that have both.

Ms. Yukimura: Yes. But they are actually...

Mr. Chun: It's constructed and people are staying there right now.

Ms. Yukimura: Right.

Chair Nakamura: Excuse me. Can I just?

Ms. Yukimura: Sure.

Chair Nakamura: Ask that why would they... what is the issue if they already exist?

Mr. Chun: The issue as I pointed out is that my client is looking at potentially buying this project and renovating it. It is fifty (50) years old almost, in the 60s, actually forty (40) years old or more and he wants to spend substantial sums which would help the economy to renovate those. The way it's worded right now, if I renovate those substantial renovations, I require a zoning permit, a class one (1) zoning permit and that's the trigger in the TAU ordinance. So if I need to get a class one (1) zoning permit to renovate existing projects that's been there since the 1960s and I don't get it because somebody else stood in line before me, then we're not going to have the renovation of those units. You're going to have a decrease in the amount of construction or just renovation issues going on.

Chair Nakamura: So just to clarify, it's a renovation that requires a class four (4) zoning...

Mr. Chun: Class four (4) or class one (1).

Chair Nakamura: ...which would trigger TAU?

Ms. Yukimura: Class one (1).

Mr. Chun: Class one (1).

Chair Nakamura: Oh, class one (1).

Mr. Chun: Which is the minimal class one (1) zoning.

Chair Nakamura: Thank you. Sorry to interrupt.

Ms. Yukimura: No problem. So I'm not sure that a class one (1) zoning permit is going to trigger... of an existing resort is going to trigger a need for a TAU and I think the problem you perceive which is good that you're bringing it up, is from the naming of the language of this category that in the section called existing resort projects, but maybe we can get that clarified and I appreciate that you raised it.

Mr. Chun: Thank you. That would be helpful because at the beginning it did say zoning permits issued pursuant to Article 19, it didn't say class one (1), two (2), three (3) or four (4). That's been the number one (1) concern because it is a class one (1) zoning permit, the minimal as you know required.

Ms. Yukimura: Yeah, it's good that you're bringing up a real live situation that we can apply the law to and see how it all works. And then on the CPR issue, are there CPRs...yeah I guess there are many CPRs... excuse my ignorance here that have multiple units on one (1) CPR parcel?

Mr. Chun: Generally no.

Ms. Yukimura: Generally no.

Mr. Chun: One (1) CPR unit will have one (1) dwelling unit. The Planning Department considers the lot of record, just one (1) lot of record; it doesn't recognize the individual units of CPR as a different lot of record.

Ms. Yukimura: Right.

Mr. Chun: And so with using that interpretation from the Planning Department and superimposing that under the requirement of a TAU, you'll have a CPR, for example a CPR project that has three (3) units on one (1) lot of record but if we take the Planning Department's interpretation that they're not recognizing individual CPR units as real property, then you're going to trigger the TAU requirement.

Ms. Yukimura: I don't think that's what...

Mr. Chun: Yeah I just wanted to point that out.

Ms. Yukimura: Okay.

Mr. Chun: Again it's a technical issue but it's something again like I pointed out, it's something that will raise its head if somebody wants to renovate in an existing TVR on a CPR and it's in all districts... residential...

Ms. Yukimura: Right.

Mr. Chun: Ag and commercial, there's CPRs in commercial districts.

Ms. Yukimura: Okay, thank you. That's all I have.

Chair Nakamura: Any further questions for Mr. Chun?

Mr. Bynum: Just a clarification and I appreciate your testimony and you said you were going to provide this in writing?

Mr. Chun: I will definitely provide something in writing.

Mr. Bynum: But just for clarification, your client if they have an existing vacation rental, you want to make sure they can renovate but under the current law they couldn't expand it, right?

Mr. Chun: Correct.

Mr. Bynum: Right. And the same with TVRs, after March 7, 2008, no new ones outside the VDA?

Mr. Chun: Correct. So I'm not talking about allowing any new...

Mr. Bynum: So you're concerned about renovation and keeping it up to speed but not expansion of the...

Mr. Chun: Correct. There are no new TVRs allowed after March 2008.

Mr. Bynum: March 7, 2008, thank you very much. I just wanted to clarify that, if somebody's getting confused.

Mr. Chun: There are no new TVRs which is a TAU allowed after March 2008.

Mr. Bynum: Right, thanks.

Chair Nakamura: Chair Furfaro.

Mr. Furfaro: I just want to make note here that without naming any projects there were two (2) projects that were thirty (30) and forty (40) years old that were not in the VDA area. One (1) came forward to correct their zoning when we were doing the transient accommodation Bill, that project clarified that. There was another that never came forward, so I just want to say that there was a lot of dialog about correcting that 1968 and 1970 zoning but if the representatives didn't come forward to attempt to correct it, that's their kuleana.

Mr. Chun: Alright.

Mr. Furfaro: Okay? Just so we're real clear.

Mr. Chun: I totally agree with you.

Mr. Furfaro: And one (1) of them did come forward and we recognize that they were operational for almost forty (40) years and that was corrected.

Mr. Chun: That's why my client as being the purchaser of the project that you're thinking of, we're requesting why didn't you correct it? But be that as it may, yes you are correct.

Chair Nakamura: Any further questions for Mr. Chun? Okay thank you Jonathan and we would appreciate your comments in writing and any suggestions you might have about how we can address those.

Mr. Chun: I will do so. Thank you very much for the opportunity.

Ms. Yukimura: Thank you.

Chair Nakamura: Any further comments, public testimony at this time? Okay, we can come back to the regular Committee Meeting and open it up for Committee discussion

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Furfaro: May I make one (1) suggestion?

Chair Nakamura: Yes.

Mr. Furfaro: Because it sounds to me like you're going to provide an opportunity for two (2) weeks for people to digest this amendment.

Chair Nakamura: That's right.

Mr. Furfaro: I had heard earlier that you might have another amendment to be introduced and it might be fair and reasonable to have that introduced as well for the purpose of... you know... letting people have time to digest that also.

Chair Nakamura: Right.

Mr. Furfaro: I just wanted to share that with you.

Chair Nakamura: There will be further amendments to this Bill based on the testimony we received two (2) weeks ago and today, so I just wanted to let the Committee members know that that's forthcoming. The concern is timing wise, our next regularly scheduled Committee meeting would have been on September 14 that has been canceled due to our move to the new building so the next Committee Meeting will not be until September 28. Just for the members of

the public to note, the next Committee Meeting where this subject will come up will be on September 28. I wanted to ask Committee members to prepare amendments in the meantime and if we could get the amendments by September 7 to our legal analyst, Peter Morimoto, that way we can at least keep the process moving internally. Would that be okay? Does that deadline work for everyone?

Ms. Yukimura: I mean we have one (1) amendment pending.

Chair Nakamura: That's right.

Ms. Yukimura: As a motion and I understand that in order to give everybody time to digest that amendment, we will not be voting on that amendment today?

Chair Nakamura: Will that be okay with members?

Ms. Yukimura: In terms of the introduction of other amendments and sharing them with the public, are we saying that any other amendments would be sent to our staff counsel by September 7 but I'm trying to think of how that might be made available to the public as well so that they could be able to digest them. If we're looking at wanting to take action on the 14th?

Chair Nakamura: The 28th is the next Committee Meeting.

Ms. Yukimura: 28th, okay.

Chair Nakamura: The reason we would like to have the information given to our legal analyst by the 7th is so that there's time to vet the amendments through the County Attorney's Office and then be ready to present at our 28th meeting.

Ms. Yukimura: Okay.

Chair Nakamura: I don't know if any other, unless you have any suggestions on how to get it out earlier, that was the intent.

Ms. Yukimura: If the main delay is to vet it with the County Attorney and assuming that a lot of them will not raise any legal issues and can get the approval of the attorney, at least a week before the 28th it might be good to make the drafts available to everyone after the vetting by the attorney.

Chair Nakamura: Do we have a process to do that?

Mr. Furfaro: No we do not.

Chair Nakamura: Okay, I'm seeing...

Mr. Furfaro: Do you have an amendment (inaudible-mic off) suggesting you introduce it now, public so that it can be aired. If you get new amendments to the County Attorney over the next couple of weeks, you should not circulate them amongst yourselves.

Chair Nakamura: County Clerk Peter Nakamura.

PETER A. NAKAMURA, COUNTY CLERK: Committee Chair Nakamura and members of the Committee. I think what we're trying to do is we're trying to route the proposed floor amendments from individual Councilmembers to the Bill's analyst and I think once we get the... if we could have some time to further look at questions that Council Vice Chair Yukimura raised. Because I think what we're trying to do is we're trying to balance against the SunShine Law issues and at that point so... if we could have some time Committee Chair and Vice Chair to look at that issue but still if we could ask to hold to the deadline that Committee Chair Nakamura asked, so that at least we can get it to that first stage.

Ms. Yukimura: I have no problem with the deadline.

Mr. Nakamura: Thank you.

Ms. Yukimura: I mean I don't have amendments prepared for submittal today. I have an intention to do some amendments even small ones like amending the wording of existing resort but I think in terms of the SunShine Law, I mean in terms of the amendments I worked on with Farm Worker Housing, I shared them with the group I was working with. I don't think there's a problem with a member of the Council sharing a potential draft amendment with members of the public, right?

Mr. Furfaro: I want to reiterate what I said, if you are preparing amendments that are planned to be introduced, you deal with our legal analyst and in fact I would rather you understand my point if you want to share them with somebody that's not a Councilmember and so forth, that's your business. But to get it back on the Council here for the body it has to be at a posted meeting and that is where it is shared.

Ms. Yukimura: I don't have a problem with... well actually I do have a problem but I will abide by your (inaudible) to not share it with other Councilmembers which is really funny because I can share it with...

Mr. Furfaro: Let me qualify it as...

Ms. Yukimura: But I understand that...

Mr. Furfaro: Don't share it beyond a second Councilmember.

Ms. Yukimura: Right.

Mr. Furfaro: Because you are allowed to enter into...

Ms. Yukimura: We have to work...

Mr. Furfaro: ... but please...

Ms. Yukimura: ... on some amendments to SunShine Law.

Mr. Furfaro: ... we have only a three (3) week period in September to get us to a good place on responding to a Bill that's been really worked on with due diligence by our Planning Department and we only have three (3) weeks. Mr. Clerk, I'm not sure if the Committeewoman is finished with you.

Chair Nakamura: Do you have any further questions for the County Clerk?

Ms. Yukimura: No.

Chair Nakamura: So again if we can agree then to get our amendments to Peter Morimoto by September 7 and then we will meet as a Committee on September 28 to air those amendments. There's quite a few housecleaning and changes that our Planning Department and County Attorneys are working on and that we've been aware of. So there's going to be a lot of discussion at that meeting.

Ms. Yukimura: I want to say my sense is that everybody wants to move on this as quickly as we can but with enough time to deliberate so that we can come up with a good law in the end.

Chair Nakamura: Yes.

Ms. Yukimura: Okay, thank you.

Chair Nakamura: So with that, would someone like to defer?

Mr. Bynum: I just want to make some comments about some of the testimony that... you know the Charter amendment passed a couple of years ago, so the suggestion that we would defer action on this you know for a longer period of time, I think we defer... I'm glad it's here, I'm glad it's before us and you know there are instances where a moratorium might be appropriate. I don't believe this is one of that. A moratorium is for a specific purpose for a limited period of time in order to accomplish some goal. We have our marching orders from the public in terms of this Charter amendment, they said limit this or you have to act on any petitions yourself County Council unless you pass this Bill. It's time for us to do that. We have never had a growth restriction but this Bill provides one for the first time consistent with the General Plan to the extent that it's possible and we had a great discussion today about how we're going to meet the spirit of that through some creative amendments. So there are other instances where a moratorium would make sense if there was some potential harm to the community and if it was for a limited period of time to accomplish the very specific goal. I don't think that applies in this circumstance, so I just wanted to make those comments.

Chair Nakamura: Thank you. Any further comments? Chair Furfaro.

Mr. Furfaro: As a non-Committee member, you can take it from your Committee members first, I'll hold.

Chair Nakamura: Councilmember Yukimura.

Ms. Yukimura: I just wanted to thank the Planning Department who has been most attentive to the concerns on all sides of the issue and has really helped us develop a good framework for trying to address those needs in a responsible way. When we have that kind of work by our departments, it's so helpful to those of us who are the policy makers and so thank you very much to Mike and Marie and your team.

Chair Nakamura: Thank you. Chair Furfaro.

Mr. Furfaro: Yes, thank you. I too, I said a little bit earlier but I do want to thank the Planning Department for their fine work and attentiveness to this Bill. At the same time I want to remind members in the Committee that do your work now on your amendments because anyone as Mr. Bynum has pointed out that has an application and wants to come forward on a project that needs to be dealt with by this Council, we don't have a mechanism right now on how the Planning Department would support the Council on any application that came forward. So there is since 2008 a little sense of urgency. I think we're working towards a very good Bill and a lot of issues are being surfaced with good dialog but until such time that we complete that Bill, that kuleana is with this Council...

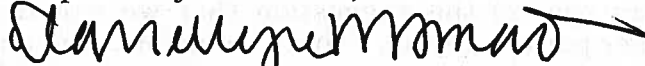
Mr. Bynum: Scary.

Mr. Furfaro: Well... let's plan on working through the holidays if we had to. So there is some urgency with this Bill. Thank you Chairwoman for a fine job as well.

Upon motion duly made by Mr. Bynum, seconded by Ms. Yukimura, and unanimously carried, Bill No. 2410 was deferred.

There being no further business, the meeting was adjourned at 11:26 p.m.

Respectfully submitted,



Darrellyne M. Simao
Council Services Assistant II

APPROVED at the Committee Meeting held on September 28, 2011:



NADINE K. NAKAMURA
CHAIR, PLANNING COMMITTEE